

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CIVIL ACTION NO. 89-1303

NEWARK COALITION FOR LOW  
INCOME HOUSING, et al.,

Plaintiffs,

v.

NEWARK REDEVELOPMENT AND  
HOUSING AUTHORITY, and JACK  
KEMP, Secretary of Housing  
and Urban Development

Defendants.

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**1999 SETTLEMENT AGREEMENT**

**I. Effect of Agreement.** Except as specifically provided herein, this Agreement supersedes the 1989 Settlement Agreement, the 1996 Amended Settlement Agreement and all prior Implementing Orders.

**II. Stella Wright Homes.**

A. Newark Redevelopment and Housing Authority ("NHA") shall apply forthwith to the United States Department of Housing and Urban Development ("HUD") for authority to demolish the high rise project known as Stella Wright Homes ("SWH"). NHA shall take the following steps in an effort to secure one-for-one replacement of housing units lost by reason of the demolition of SWH:

1. NHA shall apply to HUD for a HOPE VI grant for the current year, and, failing receipt of the grant, for the year 2000. In the event NHA fails to receive a HOPE VI grant in either the current year or in the year 2000, NHA will apply for such a grant in each year thereafter

when such grants are available and NHA is eligible to receive a grant.

2. NHA shall apply to HUD for Section 8 Certificates or Vouchers ("vouchers") to relocate SWH tenants, which vouchers shall be in addition to vouchers which NHA presently has available.

B. NHA shall take the following steps to accommodate SWH tenants during the period while they are securing new homes:

1. NHA shall maintain SWH buildings which are utilized on a temporary basis to continue to house SWH tenants in a decent, safe and sanitary condition.

2. NHA shall establish a relocation and counseling unit staffed with high level employees to assist SWH tenants relocate themselves, and NHA shall relocate them in accordance with the provisions of the Uniform Relocation Act. NHA shall proceed to cure the administrative and management deficiencies noted in the Abt Associates, Inc., report entitled "Report on Section 8 Market Analysis and Relocation Report."

### **III. Administrative Provisions.**

A. In order to cure its failure to repair and re-rent attrition units in a timely manner, NHA shall take the following steps:

1. NHA shall adopt the Admissions and Continued Occupancy Policy recommended by Abt Associates, Inc., and the TSAP attached hereto as Exhibit A. Nothing herein shall preclude NHA from modifying or amending its Admissions and Continued Occupancy Policy and TSAP in order to conform with statutory or regulatory requirements, provided that during the continuance of this agreement NHA shall advise the other parties ten days before the effective date of any modification or amendment. Abt Associates, Inc., has been requested to

consult with the parties and prepare a separate TSAP and Side Order provisions for Branch Brook Manor. Upon completion of this separate TSAP and Side Order provisions NHA shall adopt and comply with them with respect to filling vacancies at Branch Brook Manor.

2. NHA shall proceed to cure the administrative and management deficiencies noted in the ABT Associates, Inc., reports entitled Report on Vacancy and Turnaround Problems at the Housing Authority of the City of Newark, Vacancy and Turnaround Problems - Final Recommendations, and Report on the Analysis of Vacancies at the Mixed Population Buildings and Housing Options for People with Disabilities.

3. NHA shall take steps necessary to make available to persons on its waiting list Section 8 vouchers which NHA has obtained from HUD, including the establishing of adequate rental market research and counseling support and complying with the other recommendations of Abt Associates, Inc., so that the Section 8 vouchers are leased and utilized.

B. NHA shall retain Abt Associates, Inc., for the purposes listed below:

1. To support NHA's demolition and relocation at SWH.
2. To assist with the preparation of an application or applications for a HOPE VI grant.
3. To assist with the curing of the administrative and management deficiencies referred to in paragraph III.A.2.
4. To assist in implementation of repair and occupancy reorganization.
5. To assist NHA utilize the Section 8 vouchers which HUD has awarded to it but which NHA has not made available to tenants or persons on its waiting list.
6. To monitor NHA's progress and report to the court periodically concerning

NHA's compliance with the matters as to which the consultant is providing assistance.

C. NHA shall adopt and be governed by the provisions of the "Side Order" attached hereto as Exhibit B, subject to future modifications relating to Branch Brook Manor.

**IV. Mechanism for Oversight and Enforcement of the 1999 Settlement Agreement.**

A. The Special Master previously appointed by the court shall have oversight responsibility for this 1999 Settlement Agreement, and the initial responsibility to ensure compliance with said Agreement.

B. If NHA believes that it will be unable to comply with any provisions of this Agreement, it shall immediately notify the Special Master and the parties.

C. The Special Master shall meet with the parties upon request to discuss compliance with the 1999 Settlement Agreement.

D. If, after meeting with the Special Master, a party is not satisfied with the resolution of the matter, the party shall notify the Special Master who shall prepare a report of his findings which shall be served on the parties.

E. If a party objects, it may then file a notice of motion in the United States District Court for such further orders as may be necessary or appropriate for the construction, implementation, or enforcement of this Agreement.

F. If NHA fails to adhere to the construction schedule approved by the court, the court may, upon the motion of any party, enter such orders as it deems appropriate to ensure that replacement housing is constructed in a timely manner; provided, however, that NHA shall not be responsible for delays in construction which are beyond its control, and in such case, the schedule for completion may, upon the application of the NHA and after notice to counsel for the parties,

be adjusted by the court.

**V. Obligation of the Parties.**

**A. Construction.**

1. Congress having appropriated, and HUD having provided funding to the NHA, to construct housing in accordance with the 1989 Settlement Agreement in this case, NHA, subject to continued funding, shall build 1,777 units of public housing in accordance with the construction schedule ordered by this court as set forth in Exhibit C. The provisions of paragraph 8 of the 1989 Settlement Agreement shall remain in effect except that the construction schedule referred to therein shall be the construction schedule adopted in this Agreement, as it may be amended or revised from time to time.

2. The NHA shall provide the court and the parties with quarterly construction reports on the fifteenth day of the months of December, March, June, and September until the 1,777 units have been completed. The reports shall set forth in detail the status of all of NHA's public housing construction projects remaining uncompleted. The reporting obligations with respect to the "Columbus Homes Replacement Housing" shall terminate upon completion of construction of that housing.

**3. Columbus Homes.**

a. NHA has obtained court approval for the demolition of Columbus Homes.

b. NHA will not dispose of any land acquired as a precondition to the demolition of Columbus Homes if such disposition will have the effect of preventing it from complying with this Agreement. If NHA decides to dispose of any of such land, it will provide

counsel for plaintiffs at least thirty days advance written notice of its intention to effect such a disposition. Upon the written request of counsel for plaintiffs, NHA will provide pertinent information establishing that the conditions of this paragraph have been satisfied.

4. Construction Manager. NHA will enter into and/or maintain contract(s) with a construction manager to manage all construction of its new projects.

5. Construction of Housing on the Columbus Homes Site. After all buildings on the Columbus Homes site are demolished, NHA shall utilize the Columbus Homes site for public housing. NHA shall not construct less than 300 units of public housing on the Columbus Homes site if the failure to do so will have the effect of preventing it from complying with this Agreement. If NHA decides to construct less than 300 units on that site, it shall notify the Special Master and counsel for the plaintiffs. NHA will provide to the Special Master and counsel for plaintiffs information demonstrating that construction of such lesser number of units will not result in noncompliance with this Agreement.

B. Vacancy Repair Program.

1. Attrition Units. The NHA will repair and occupy Attrition Units on an ongoing basis.

a. Definition of Attrition Unit. An Attrition Unit is defined as any unit that became vacant after September 30, 1994. For purposes of this Article V.B.1., the Attrition Units at the family projects of Hayes, Scudder, Kretchmer, Walsh, Stella Wright and Seth Boyden Homes are excluded; provided that each building at Seth Boyden Homes and Seth Boyden Elderly 12-21E shall be included starting in the month after the month in which the modernization or reconfiguration of the units in the building has been completed.

b. Time for Repair and Rental of Attrition Units. When a unit becomes vacant, it shall be scheduled for repair on the first day of the next month. A unit is deemed vacant when the NHA has a right to take legal possession. Attrition Units shall be repaired in accordance with HUD Housing Quality Standards by the end of the month following the month in which the unit first became vacant. For example, if a unit became vacant on October 29, 1994, the unit would have to be repaired by November 30, 1994. Similarly, if a unit became vacant on October 2, 1994, the unit would have to be repaired by November 30, 1994.

NHA shall act expeditiously to rent vacant units. For purposes of this paragraph, a unit is deemed rented when a lease for the unit is signed. For the purposes of determining compliance with this paragraph: (i) absent unusual circumstances, all units other than efficiency units and one-bedroom units in projects for the elderly shall be rented 20 working days after repairs are completed; (ii) during each six month period NHA's average turnaround record shall be no more than 60 days.

c. Units with Extraordinary Damage. An Attrition Unit which has suffered an extraordinary amount of damage due to extraordinary circumstances, such as fire, shall not be required to be repaired in accordance with the schedule in Section 1.b. above. The NHA shall report to Abt Associates, Inc., about such units, specify the nature of the extraordinary damage for each unit, and the report shall set forth an estimated date for the repair of each unit.

d. Shortening Time for Repair and Rental. The times for repair and rental of attrition units set forth above are outside limits applicable at the time this 1999 Settlement Agreement becomes effective. It is anticipated that upon compliance with Abt Associates, Inc.'s management and administrative recommendations as required herein, the times for repair and

rental of attrition units will be substantially reduced. NHA shall meet the targets for times to repair and rent attrition units which Abt Associates, Inc., shall establish from time to time.

2. Miscellaneous Provisions of the Vacancy Repair Program.

a. Reporting Requirements.

(i) The NHA shall provide monthly to Abt Associates, Inc., and quarterly to the parties reports as currently provided. These include: Cumulative Attrition Reports from 10/1/94 on (REP 208 and 208S); Housing Status Report (Move Ins) (REP 20 and 200S); Housing Status Report (Move Outs) (REP 202 and 202S); Housing Status Report (Transfers) (REP 203 and 203S); Housing Status Report (Vacant Units) (REP 203 and 203S) for all projects.

The term "date vacated" on the Cumulative Attrition Reports shall be the date the NHA has the legal right to take possession of the unit.

The reports of extraordinary circumstances relating to Attrition Units required by paragraph V.B.1.c. above will be provided to Abt Associates, Inc., by the 20th of the month after the extraordinary circumstance has become apparent.

(ii) Upon request of plaintiffs' counsel, the NHA will, subject to review and privilege, provide plaintiffs with other documents reasonably necessary to ensure compliance with this Agreement. If the NHA denies the request, the NHA will provide its reason for the refusal to the plaintiffs and to the Special Master who will decide whether the document should be provided. The time during which this procedure may be used shall be the time during which the NHA is required to provide reports on vacancies.

b. All units rented pursuant to this Agreement shall be rented in



accordance with the TSAP attached as Exhibit A to this Agreement or a separate Branch Brook Manor TSAP.

c. For any 12 month period at least 40% of all units repaired and occupied pursuant to this Agreement shall be occupied by families on NHA's waiting list for public housing, except to the extent that such units may be needed to relocate SWH tenants. If the NHA desires an exemption from this provision, it shall notify the parties and the Special Master, who shall resolve the matter.

d. In order to qualify for a transfer a tenant must meet the criteria set forth in the TSAP.

### 3. Kretchmer Homes.

a. The NHA will not take action designed to force tenants to move out of Kretchmer Homes unless such removal (i) is required to implement a "demo - repo" plan approved by HUD, (ii) is necessary to ensure the health or safety of the moving tenant or of other tenants, or (iii) the number of tenants remaining in the building or on the floor which the tenant occupies is so small that it has become economically unfeasible to continue to operate the building or the floor.

b. Upon being informed that a tenant has left his or her unit in one of said Homes, the NHA will promptly seal the unit so as to prevent theft and vandalizing the unit.

c. The NHA will continue to provide maintenance and services at those projects for the benefit of the occupied units until such time as NHA is authorized by HUD and applicable statutes and regulations to abandon such projects.

### C. Additional Reporting Provisions.

December and March Abt Associates, Inc., shall provide the court and parties with a report setting forth (i) the extent to which NHA has complied with the requirements of paragraphs II.A., II.B. and III.A. of this Agreement, (ii) the matter as to which NHA remains in noncompliance, and (iii) the action required of NHA to achieve compliance.

2. Abt Associates, Inc., may make additional reports to the court and the parties at any time it determines a report would be useful or necessary to ensure compliance with this Agreement.

3. NHA shall ensure that it or Abt Associates, Inc., will provide the parties with the reports concerning compliance with the TSAP required by the Side Order.

#### **VI. Other Terms.**

A. Nothing in this Agreement shall be construed to require HUD to perform the obligations of a public housing agency or to act as a guarantor of NHA's performance under this Agreement. In addition, HUD shall not be obligated to provide any funding to NHA to carry out the terms of this Agreement, except as expressly set forth in the 1989 Settlement Agreement and in this 1999 Settlement Agreement.

B. The terms of this Agreement constitute the entire understanding among the parties, and no statement, remark, agreement or understanding, oral or written, which is not contained herein, shall be recognized or enforced.

C. This Agreement may be modified only with the written consent of the parties and/or by order of the court.

D. NHA shall not be obligated to carry out any term or provision of this Agreement if any otherwise applicable state or federal statute(s) or regulation(s) precludes NHA from complying

with that term or provision

E. NHA's obligation to report concerning the status of its vacancy repair program and to ensure the furnishing of quarterly reports of Abt Associates, Inc , shall terminate, and this action shall be dismissed upon the occurrence of the following events

1 The "Columbus Homes Replacement Housing" (the 1,777 units covered by the original 1989 Settlement Agreement) shall have been completed and occupied

2. Abt Associates, Inc , shall have certified that NHA has complied with the provisions of paragraphs II.A , II.B and III A of this Agreement except to the extent that compliance is precluded by applicable statute or regulation or is impractical or impossible in the light of prevailing circumstances If Abt Associates, Inc , certifies that compliance is impractical or impossible it shall set forth the reasons why compliance is impractical or impossible

ORDERED AND APPROVED BY

A handwritten signature in dark ink, appearing to read "Dickinson R. Debevoise", is written over a horizontal line.

DICKINSON R. DEBEVOISE  
U S S D J

DATED May 25 , 1999

## EXHIBIT A

### III. Tenant Selection and Assignment Plan

The purpose of the Tenant Selection and Assignment Plan is to describe the methods to be employed to make unit offers to applicants and transfer offers to residents in a manner that is fully compliant with all applicable Civil Rights Laws and facilitates the efficient leasing of vacant units that are ready for occupancy.

#### **A. Organization of the Waiting List**

##### **1. General Occupancy Housing**

It is NHA's policy that each applicant for general occupancy (family) housing shall be assigned his/her appropriate place on a single community-wide waiting list in sequence based upon:

- type and size of unit needed and selected by the family (e.g. general occupancy building, accessible or non-accessible unit, number of bedrooms);
- applicant preference or priority, if any; and
- date and time the application is received.

NHA will maintain its waiting list in the form of an automated system (capable of being tracked back to original paper applications) that records the type and size of unit needed, each applicant's priority/preference status, the date and time of application, and the race and ethnicity of the family head.

##### **2. Mixed Population/Elderly/Disabled Housing**

The Mixed Population buildings are targeted equally to one and two person families with a head, spouse or sole member who is either 62 years of age or older (elderly families) or who is a person with a disability (disabled families). Only if there are no applicants who are elderly families or disabled families would Near Elderly families (families with a head, spouse or sole member who is between the ages of 50 and 61) receive unit offers.

If approved by HUD<sup>1</sup>, it will be NHA's policy that each applicant for Mixed Population, elderly designated or disabled designated housing shall be assigned his/her appropriate place from site based waiting lists, in sequence based upon:

- type and size of unit needed and selected by the family (e.g. mixed population building, accessible or non-accessible unit, number of bedrooms);
- applicant preference or priority; and
- date and time the application is received.

All current and future applicants will be given an opportunity to choose up to three sites<sup>2</sup> where they will accept unit offers. Based upon these statements of applicant preference, individual waiting lists will be developed for each site. All current applicants will retain the preferences to which they would otherwise be entitled under this policy, as well as their current date and time of application.

<sup>1</sup> Until the site based waiting list is approved by HUD, the mixed population buildings will also employ a single community-wide waiting list.

<sup>2</sup> A site is a development, identified by NJ 2 number. Applicants are not offered an opportunity to select among buildings at a site with multiple buildings.

Even though applicants have selected to be on waiting lists for specific sites, the administration of the waiting list will be performed centrally.

After HUD approves site-based waiting lists, applicants for mixed population buildings will be provided a handout that describes each of the mixed population buildings (location, amenities, etc.), including the approximate waiting time by bedroom size for each development. The waiting times will be updated often enough to give new and current applicants the average length of waiting time for each size unit at each development. Applicants will also receive an explanation of the lottery that will be used to award excess one bedroom apartments (over and above those needed for two-person families).

Every applicant will be given an opportunity to select up to three sites at the time the site based waiting lists are established and an opportunity to revise that selection each year when the waiting list is updated. Applicants will be informed of the length of wait for each site both when they make their initial selection of three sites and each year when the waiting list is updated.

Should waiting lists for any buildings grow short, NHA will market the buildings as described in the Marketing Section.

#### **B. Unit Offers to Applicants**

1. The plan for assignment of dwelling units to assure equal opportunity and nondiscrimination on grounds of race, color, sex, religion, national origin, disability or familial status is PLAN "A" with modifications as described below. Under Plan A, the first qualified applicant in sequence on the waiting list is made one offer of a unit of appropriate size and type. The applicant must accept the vacancy offered or be dropped to the bottom of the qualified applicant list, losing any applicable preferences (unless the refusal is for "good cause" as described below).
2. NHA will first match the characteristics of the unit available to the highest ranking applicant for a unit of that size, type and special features (if any), taking into account any limitations on admission because of designated housing (if applicable). Preferences, if any, will then be used to determine the order of selection from the waiting list. If two applicants need the same type and size of unit and have the same preference status, the applicant with the earlier date and time of application will receive the earliest offer.
3. Further, in the selection of a family for an adaptable unit or a unit with accessible features, NHA will give preference to families that include a person with disabilities who can benefit from the unit features.
4. In selecting applicants for offers of units, NHA will take into account any local preferences that may be properly adopted following the statutorily required public hearing. In determining what local preferences to adopt, NHA must consider local housing needs and conditions as well as the requirements of the Quality Housing and Personal Responsibility Act of 1998.
5. The local preferences, if any, described above may be a factor in most admissions, although there will be instances (e.g. an adaptable unit or a unit with accessible features is ready and no applicant in the targeted preference group needs the features) when the NHA will make an offer to an applicant who does not qualify for a local preference. Certain types of transfers will also be processed with new admissions. See Section F. for the ratio of transfers to new admissions.

6. The applicant must accept the vacancy offered within 3 working days of the date the offer is communicated (by phone, mail, or the method of communication designated by the applicant) or be dropped to the bottom of the qualified applicant list. (See good cause discussion below) All offers made over the phone will be confirmed by letter to the applicant. If unable to contact an applicant by phone or first class mail, NHA will send a certified letter, return receipt requested.
7. "Dropped to the bottom of the list" shall mean the applicant will lose standing by being moved to the bottom the waiting list, receiving a new application date (the date of refusal), and losing preference status.
8. If more than one unit of the appropriate size and type is available, the first unit to be offered will be the unit that is or will be ready for move-in first. "Ready for move-in" means the unit has no Housing Quality Standard deficiencies and is broom clean.

#### C. Due Process Rights for Applicants

To ensure that filling vacant units occurs in a timely manner, it is necessary to have a waiting list that is complete and accurate. When families and individuals apply for housing they will be informed of the importance of staying in touch with NHA and keeping NHA apprised of any changes in address, telephone number, family income or other family circumstances. While it is the responsibility of each applicant to keep NHA apprised of any changes in his/her address, phone number, family income or other family circumstances, no applicant on the waiting list, now or in the future, shall be removed from the waiting list except when one of the following situations occurs:

1. The applicant receives and accepts an offer of housing;
2. The applicant requests that his/her name be removed from the waiting list;
3. The applicant is rejected, either because he/she is ineligible for public housing at the time of certification, or because he/she fails to meet the applicant selection criteria<sup>3</sup>; or
4. The application is withdrawn because the NHA attempted to contact the applicant for an annual waiting list update, to schedule a meeting or interview, to offer or show a unit, or for some other reason, and was unable to contact the applicant.

In attempting to contact to contact an applicant, the following three methods shall be undertaken before an application may be withdrawn:

- The applicant will be called on the telephone (if the applicant has a telephone) followed up by a letter sent by first class mail to the applicant's last known address, asking the applicant to contact NHA<sup>4</sup> either by returning the update postcard or in person, bringing proof of identity;

<sup>3</sup> All rejected applicants are entitled to a complete explanation of the reason for their rejection and an informal hearing at which they may present reasons why they should not be rejected. See the Procedure on Informal Hearings for Rejected Applicants.

<sup>4</sup> Except that NHA shall contact persons with disabilities according to the methods such individuals have previously designated. Such methods of contact could include verbal or in-person contact or contacting relatives, friends or advocates rather than the person with disabilities.

- When five working days have elapsed from the date when the NHA mails the letter, if there is no response from the applicant, the applicant will be sent the same letter by Certified Mail, return receipt requested;
  - After the return receipt is received by NHA, whether signed or unsigned, if the applicant still has not contacted NHA, NHA shall publish in at least two newspapers of general circulation, one of which shall be a Spanish-language newspaper, a list of the applicants whose names are proposed for withdrawal from the waiting list. An applicant will have five working days after the publication to contact NHA in person, bringing proof of identity.
  - Prior to publishing the list of names in the newspapers, NHA shall provide the list of names to organizations that serve people of low income, the homeless and people with disabilities, since some applicants are likely to be clients of such organizations. Any organizations that request advance notice of the list of names to be published shall be provided with the list no later than five working days before it is published.
  - If an applicant contacts NHA as required at any time before ten days after publication of the list of names, he/she shall be reinstated at the former waiting list position. It is not necessary for NHA to wait for the publication of the list of names to reinstate applicants who contact them prior to the list's publication.
  - When NHA is unable to contact an applicant by first class mail to schedule a meeting, or interview or to make an offer, NHA shall suspend processing of that application until the applicant is either withdrawn (no contact by the applicant) or reinstated (contact by the applicant within the stated deadline). While an application is suspended, applicants next in sequence will be processed.
  - Because NHA's former procedures for contacting applicants with disabilities did not include the reasonable accommodation of ensuring that the communication method was appropriate for each applicant's disability, applicants with disabilities who have been withdrawn in the past two years (since January 1997) shall be entitled to one opportunity for reinstatement to their former waiting list positions until June 30, 1999, so long as they can demonstrate that were on the waiting list and that they qualify as persons with disabilities.
5. It is anticipated that lists of applicant names will be published monthly until the waiting list is stabilized and contains only the names of families currently interested in NHA housing. Thereafter, NHA will publish lists of names only as needed.
  6. Persons who fail to respond to NHA attempts to contact them because of situations related to a disability shall be entitled to reasonable accommodation, provided that the situation can be verified to be related to a disability. In such circumstances NHA shall reinstate these individuals to their former waiting list positions.
  7. Families whose applications are withdrawn or rejected as described above can only be placed on the waiting list again by applying for housing at a time that the waiting list is open. In these cases, they will have a new date and time of application.

#### D. Good Cause for Applicant Refusal of Unit Offer

If an applicant is willing to accept the unit offered but is unable to move at the time of the offer and presents to the satisfaction of NHA, clear evidence ("good cause") that acceptance of the offer of a suitable vacancy will result in undue hardship not related to considerations of race, color, sex, religion or national origin, the applicant will not be dropped to the bottom of the list.

1. Examples of "good cause" for refusal of an offer of housing include, but are not limited to:
  - The unit is not ready for move-in at the time of the offer of housing. "Ready for move-in" means the unit has no Housing Quality Standard deficiencies and is broom clean. If an applicant refuses a unit because it is not ready for move-in, the applicant will immediately be offered a unit that is ready for move-in;
  - Inaccessibility to source of employment, education, or job training, children's day care, or educational program for children with disabilities<sup>5</sup>, so that accepting the unit offer would require the adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities;
  - Presence of lead paint in the unit offered, but only when the applicant has children under the age specified by current law;
  - The family demonstrates to NHA's satisfaction that accepting the offer will place a family member's life, health or safety in jeopardy. The family must offer specific and compelling documentation such as restraining orders, other court orders, or risk assessments related to witness protection from a law enforcement agency. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption;
  - A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (each as listed on final application) or live-in aide necessary to the care of the principal household member;
  - The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30 day notice to move; or
  - An elderly or disabled family makes the decision not to occupy or accept occupancy in designated housing.
2. The applicant must be able to document that the hardship claimed is good cause for refusing an offer of housing. Where good cause is verified, the refusal of the offer shall not require that the applicant be dropped to the bottom of the waiting list or otherwise affect the family's position on the waiting list. (In effect, the family's application will remain at the top of the waiting list until the family receives an offer for which they have no good cause refusal.)
3. NHA will maintain a record of units offered, including location, date, and circumstances of each offer, and each acceptance or refusal, including the reason for the refusal.

<sup>5</sup> If the applicant has a child participating in such a program.



#### **D. Dwelling Units with accessible/adaptable features**

1. Before offering a vacant accessible unit to a non-disabled applicant, NHA will offer such units:

- First, to a current occupant of another unit of the same development, or other public housing developments under NHA's control, having a disability that requires the special features of the vacant unit (in effect, a transfer of the occupant with disabilities from a non-adapted unit to the vacant accessible/adapted unit).
- Second, to an eligible qualified applicant on the waiting list having a disability that requires the special features of the vacant unit.

2. When offering an accessible/adaptable unit to a non-disabled applicant, NHA will require the applicant to sign an agreement to move to an available non-accessible unit within 30 days when either a current resident or an applicant needs the features of the unit. This requirement is also reflected in the lease agreement signed with the applicant.

#### **E. Leasing and Occupancy of Dwelling Units**

Applications for admission and transfer will be processed centrally. Initial intake, waiting list management, screening, and assigning of housing (including transfers) will be made from the central office. Offers may be made in person, in writing or by phone from the central office or the development. When HUD approves Site-based Waiting Lists for the Mixed Populaton buildings applications may be accepted at each of these buildings, but they will still be processed centrally. Likewise, residents seeking transfers may apply for transfers at their current developments, but transfers will be processed centrally.

#### **F. Transfers (Other Than to the Newly Constructed Townhouses)**

NHA has six types of transfers: Emergency, Administrative - Category 1, Category 2 and Category 3, Incentive and Townhouse transfers. The definition of each type of transfer is found in the Transfer section of the Admissions and Occupancy Policy.

1. Townhouse transfers are discussed below in Section G.
2. Emergency and Category 1 and 2 administrative transfers and Incentive transfers will take priority over admissions. Category 3 administrative transfers will be processed at the rate of four admissions to each transfer. The specific definitions of each type of transfer are covered in Section V, Transfers, below.
3. Tenants on the transfer list may refuse transfer offers for the "good cause" reasons cited in Section C above without losing their position on the transfer list.
4. Tenants who refuse a transfer offer without good cause may be removed from the transfer list.
5. Tenants are entitled to use the NHA Grievance Procedure if they are refused the right to transfer or if NHA is requiring them to transfer and they do not want to do so.

**G. Assignment to the 1777 Newly Constructed Townhouses Constructed Pursuant to the Settlement Agreement in NCLIH v. NHA**

1. Under the terms of the Settlement Agreement, at least 1,777 townhouse units are to be constructed. Of these, 1,299 are to be occupied by qualifying tenants transferring from other NHA properties and 478 are to be occupied by applicants from the waiting list as described above.
2. Until the ceiling of 478 applicants is reached, offers to the townhouses shall alternate between applicants and transferees. This alternation applies regardless of whether the transferees are from developments slated for demolition/comprehensive modernization or from other developments.
3. As they become ready for occupancy, the 1,299 townhouses for transferees are to be occupied first by people transferring from units to be demolished or comprehensively modernized according to their lottery numbers, and second from other properties not scheduled for demolition or comprehensive modernization, according to the lottery system.
4. No one will be transferred into a unit that is inappropriate for their family size at the time of the transfer.
5. Any tenant considering a transfer to a townhouse unit must be able to get utilities connected in his/her own name.
6. Transfers from units to be demolished or comprehensively modernized:
  - (a) Qualifying tenants from developments or portions of developments that are approved for demolition or that are undergoing comprehensive modernization may receive transfers to townhouses before tenants from other properties.
  - (b) When a property is approved by HUD for either full or partial demolition, or full or partial comprehensive modernization, the tenants living in the units to be demolished or comprehensively modernized will be given an opportunity to file a transfer application for a townhouse.

These transfer applicants will be screened according to the screening standards applied to new applicants.
  - (c) Those tenants who pass screening will be placed in order, based on their previously issued lottery numbers, and will receive townhouse transfer offers as new or existing townhouses become available.
7. Transfers from other units:
  - (a) NHA has established a lottery list for tenants wishing to transfer to the townhouses from units other than those approved for demolition or comprehensive modernization;
  - (b) Once all the transfers from units to be demolished or comprehensively modernized are completed, tenants will be offered units in order from the lottery list.
  - (b) These transfer applicants will be screened according to the screening standards applied to new applicants.

As townhouse units turn over, they will be processed as Incentive Transfers, at a rate of three transfers to every applicant.

Note that the undue burdens test is not applicable to housing undergoing substantial alteration.

6. NHA will not permit these policies to be subverted to do personal or political favors. NHA will not offer units in an order different from that prescribed by this policy, since doing so violates the policy, federal law, and the civil rights of the other families on the waiting list. (Required, 24 CFR § 906.204 (a)(3)(ii))

## **II. Tenant Selection at Branch Brook**

While Branch Brook homes is not a public housing development, the provisions in the public housing TSAP related to one offer, due process protections, refusals for good cause and rights of people with disabilities shall apply to offers made from the Branch Brook waiting list.

The categories of transfers listed in the public housing TSAP apply to Branch Brook, but only for transfers from one unit to another within the building. Public housing tenants and Branch Brook tenants cannot transfer from program to program without going through the waiting list.

## **III. Plaintiff Monitoring Reports**

It is proposed that the Expert monitor NHA's activities under the TSAP on a monthly basis and that the Plaintiffs be provided with reports quarterly (by development and unit size) that indicate the demographic characteristics of tenants moving out, tenants transferring, applicants moving in, vacancy rate, turnover rate, refusal rate (by applicants and transferees) and the turnover times for units leased, broken down according to down days, make-ready days and leasing days.

## **IV. Requirement for Bi-lingual Staff and Spanish Language Materials**

As soon as practicable, but not later than June 1, 1999, Spanish speaking staff will be available to conduct interviews and answer questions of Spanish speaking applicants. In addition, no later than July 15<sup>th</sup>, 1999 all interview checklists will be translated into Spanish so that Spanish speaking applicants will be able to understand materials they are being asked to sign. Finally, no later than August 15<sup>th</sup>, 1999 the lease and Grievance Procedure will be translated and made available to all current and new tenants on request.

## **V. Pre-occupancy Orientation Process**

Beginning no later than June 1, 1999 NHA shall put into place a formal pre-occupancy orientation process to ensure that new residents are informed about their rights and responsibilities as well as NHA's rights and responsibilities, the lease and grievance procedure, utility conservation, how to care for their new homes and request needed maintenance, services available in their neighborhoods, and family budgeting. NHA shall seek qualified residents who will be employed to deliver these orientations.

## **VI. Applicant Notification of Waiting List Position and Status**

As soon as practicable, but no later than July 1<sup>st</sup>, 1999, NHA shall be prepared to provide to all applicants their waiting list numbers, preference category and the estimated length of wait, given each applicant's current preference status. NHA may opt to provide this information one day per week, since this activity consumes a good deal of staff time. All applicants will be notified that NHA's information on waiting list position is based on information provided by the applicant and, if that information has changed, that the information may be inaccurate. Further, unless an applicant is in the highest preference category, his/her waiting list number can go down as people with higher preferences join the list.

**Side Order**

**I. Civil Rights: The following shall apply:**

**Compliance with Civil Rights Laws**

1. It is the policy of the Housing Authority of the City of Newark (NHA) to comply with all laws relating to Civil Rights, including but not limited to:

- Title VI of the Civil Rights Act of 1964, (See 24 CFR Part 1)
- Title VIII of the Civil Rights Act of 1968 (as amended by the 1974 HCDA and the Fair Housing Amendments Act of 1988), (See 24 CFR Part 100)
- Executive Order 11063, Section 504 of the Rehabilitation Act of 1973, (See 24 CFR Part 8)
- the Age Discrimination Act of 1975, (See 24 CFR Part 146)
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern), (Title II deals with common areas and public space, not living units.)
- any applicable State laws or local ordinances, and
- any legislation protecting the individual rights of tenants, applicants or staff that may subsequently be enacted. (Required 24 CFR § 960.203)

2. NHA shall not discriminate because of race, color, national origin, sex, religion, familial status, or disability in the leasing, rental, or other disposition of housing or related facilities, including land, that is part of any project or projects under NHA's jurisdiction covered by a contract for annual contributions under the United States Housing Act of 1937, as amended, or in the use or occupancy thereof. (Required, 24 CFR § 100.5)

3. NHA shall not, on account of race, color, national origin, sex, religion, familial status, or disability treat any family or person in the manner described below:

- (a) Deny anyone the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to lease housing suitable to its needs;
- (b) Provide anyone housing that is different from that provided others<sup>1</sup>;
- (c) Subject anyone to segregation or disparate treatment;
- (d) Restrict anyone's access to any benefit enjoyed by others in connection with the housing program;
- (e) Treat anyone differently in determining eligibility or other requirements for admission<sup>2</sup>;
- (f) Deny anyone access to the same level of services<sup>3</sup>; or

<sup>1</sup> NHA is not only permitted but is required to provide persons with disabilities with housing that is appropriate for their needs. This accessible or adaptable housing, although different from that provided to others, is permitted because it permits persons with disabilities to participate in the public housing program.

<sup>2</sup> Except that NHA is obliged to offer reasonable accommodations to applicants with disabilities. This will not affect NHA's screening or eligibility standards, but it might require NHA to revise its procedures or practices in carrying out those standards.

As townhouse units turn over, they will be processed as Incentive Transfers, at a rate of three transfers to every applicant.

- (g) Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program.

4. NHA shall not automatically deny admission to any group or category of otherwise qualified applicants (e.g., families with children born to unmarried parents or families whose head or spouse is a student). Each applicant in a particular group or category must be treated on an individual basis in the normal processing routine. (Required, 24 CFR § 960.205)

5. NHA will identify and eliminate situations or procedures that create a barrier to equal housing opportunity for all. In accordance with Section 504, and the Fair Housing Amendments Act of 1988, NHA will make structural modifications to its housing and non-housing facilities (Required, 24 CFR §§ 8.21, 8.23, 8.24, and 8.25) and make reasonable accommodations in its procedures or practices (Required, 24 CFR § 100.204) to permit people with disabilities to take full advantage of the NHA's housing program and non-housing programs.

- (a) In making reasonable accommodations or structural modifications to existing housing programs (See 24 CFR § 8.24) or in carrying out Other Alterations (See 24 CFR § 8.23 (b)) for otherwise qualified persons with disabilities, NHA is not required to:

(i) Make each of its existing facilities accessible [24 CFR § 8.24 (a) (1)]; or make structural alterations when other methods can be demonstrated to achieve the same effect; [24 CFR § 8.24 (b)]

(ii) Make structural alterations that require the removal or altering of a load-bearing structural member; [24 CFR § 8.32 (c)]

(iii) Provide an elevator in any multifamily housing project solely for the purpose of locating accessible units above or below the grade level; [24 CFR § 8.26]

(iv) Take any action that would result in a fundamental alteration in the nature of the program; [24 CFR § 8.24 (a) (2)] or

(v) Take any action that would result in an undue financial and administrative burden on the Authority. [24 CFR § 8.24 (a) (2)]

- (b) When the NHA is making substantial alterations (in developments with 15+ units, work whose value exceeds 75% of the replacement cost of the facility) to an existing housing facility (see 24 CFR § 8.23), NHA is not required to:

(i) Provide an elevator in any multifamily housing project solely for the purpose of locating accessible units above or below the grade level; [24 CFR § 8.26]

(ii) Make structural alterations that require the removal or altering of a load-bearing structural member; [24 CFR § 8.32 (c)] or

(iii) Make structural alterations to meet minimum accessibility requirements where it is structurally impracticable. Structural impracticability is defined as: Changes having little likelihood of being accomplished without removing or altering a load-bearing structural member and/or incurring an increased cost of 50% or more of the value of the element of the building or facility involved. [24 CFR § 8.32 (c) and § 40, Uniform Federal Accessibility Standards, 3.5 and 4.1.6(3)]

<sup>3</sup> This requirement applies to services provided by NHA and services provided by others with NHA's permission on public housing property. Thus, a health screening program offered by the local health department in a public housing community room would have to be fully accessible to persons with disabilities.

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## VII. Marketing and Outreach

1. NHA will conduct outreach as needed to maintain an adequate application pool representative of the eligible population in the area. Outreach efforts will consider the level of vacancy in the NHA's units, availability of units through turnover, and waiting list characteristics. NHA will periodically assess these factors in order to determine the need for and scope of any marketing efforts. All marketing efforts will include outreach to those least likely to apply (Affirmative Marketing Requirement).

2. Marketing and informational materials will be subject to the following:

- (a) Marketing materials will comply with Fair Housing Act requirements on wording, logo, size of type, etc. (Required, 24 CFR §109.30(a));
- (b) Marketing will describe the housing units, application process, waiting list and preference structure accurately;
- (c) Marketing will be "plain language" and will use more than strictly English-language print media;
- (d) Agencies that serve and advocate for potentially qualified applicants least likely to apply (e.g. the disabled) will be contacted to ensure that accessible/adaptable units are offered to applicants who need their features;
- (e) Marketing materials will make clear who is eligible: low income individuals and families; working and non-working people; and people with both physical and mental disabilities; and
- (f) NHA will be clear about its responsibility to provide reasonable accommodations to people with disabilities.

## VIII. Notification to Applicants of TSAP and Hearing Rights

No later than two weeks after the adoption of the revised TSAP NHA will develop a poster that will be prominently displayed in its application office and all development offices that describes the new TSAP generally and includes a copy of the entire new TSAP. The poster shall also advise applicants and transfer applicants of their hearing rights.

**U.S. DISTRICT COURT**

LOW INCOME COALITION V. NEWARK HOUSING AUTHORITY

**COLUMBUS HOMES REPLACEMENT HOUSING SCHEDULE**

PROJECT #	UNITS PLAN	UNITS COMP	TSA	FSA	DEVELOPER SELECTION	PHA PROPOSAL APPROVAL	CONT EXEC	CONST START	CONST COMP	CONTRACT AMOUNT	PROJ. #	DEVELOPER
NJ 2-39	124	124	DONE	DONE	DONE	DONE	DONE	DONE	DONE	\$11,282,813	NJ 2-39	DKM/WORLD 1
NJ 2-40	100	100	DONE	DONE	DONE	DONE	DONE	DONE	DONE	\$8,221,862	NJ 2-40	SERENITY
NJ 2-41	199	199	DONE	DONE	DONE	DONE	DONE	DONE	DONE	\$20,200,000	NJ 2-41	KEMSCO/ZAK
NJ 2-42	194	194	DONE	DONE	DONE	DONE	DONE	DONE	DONE	\$20,530,319	NJ 2-42	BELLEMEAD
NJ 2-43	100		DONE	DONE	DONE	DONE	DONE	DONE	7/99	\$10,767,173	NJ 2-43	BELLEMEAD
NJ 2-44	94	94	DONE	DONE	DONE	DONE	DONE	DONE	DONE	\$10,057,917	NJ 2-44	GWD/BJT
NJ 2-45	100		DONE	DONE	DONE	DONE	7/99	9/99	12/00	\$9,104,540	NJ 2-45	CLAREMONT
NJ 2-46	96	58	DONE	DONE	DONE	DONE	DONE	DONE	5/99	\$10,331,111	NJ 2-46	BELLEMEAD
NJ 2-47	100		DONE	DONE	DONE	DONE	9/99	11/99	2/01	\$9,633,840	NJ 2-47	D.A. DEVELOP
NJ 2-48	96		DONE	*	2/00	10/00	7/01	9/01	11/02		NJ 2-48	
NJ 2-49	88		DONE	DONE	DONE	DONE	11/99	1/00	4/01	\$8,348,000	NJ 2-49	J.P.AFFORDAB
NJ 2-50	88		DONE	DONE	DONE	DONE	7/99	9/99	12/00	\$8,033,809	NJ 2-50	FIRST CONN.
NJ 2-51	42	42	DONE	DONE	DONE	DONE	DONE	DONE	DONE	\$3,354,000	NJ 2-51	MT. PLEASANT
NJ 2-52	300		DONE	DONE	11/99	6/00	1/01	3/01	3/03		NJ 2-52	
NJ 2-53	56		DONE	DONE	2/00	10/00	7/01	9/01	12/02		NJ 2-53	
<b>TOTALS</b>	<b>1,777</b>	<b>811</b>	<b>ALL</b>	<b>ALL</b>	<b>12</b>	<b>9</b>	<b>8</b>	<b>8</b>	<b>6</b>	<b>\$129,865,384</b>	<b>15</b>	<b>12</b>

\* AMENDED FSA

AS OF:  
APRIL 16  
1999